

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

In the Matter of the Application of)
HAWAII ELECTRIC LIGHT COMPANY, INC.)
For Approval to Grant an Easement)
Over its Ahualoa Transmission Line)
Property.)
_____)

DOCKET NO. 03-0047

DECISION AND ORDER NO. 20234

Filed June 16, 2003
At 10:00 o'clock A.M.
Karen Higashi
Chief Clerk of the Commission

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DEPT. OF COMMERCE AND
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STATE OF HAWAII

ATTEST: A True Copy
KAREN HIGASHI
Chief Clerk, Public Utilities
Commission, State of Hawaii.
K. Higashi

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DECISION AND ORDER

I.

By application filed on February 25, 2003, HAWAII ELECTRIC LIGHT COMPANY, INC. ("HELCO") seeks commission approval of its Grant of Easement, dated January 28, 2003 (the "Grant of Easement"), to Kaori Hiromi Iizuka and Kayoko Iizuka ("Grantees"), pursuant to Hawaii Revised Statutes ("HRS") § 269-19. Copies of the application were served on the Department of Commerce and Consumer Affairs, Division of Consumer Advocacy ("Consumer Advocate").

On March 5 and 11, 2003, HELCO responded to the commission's information requests. On April 29, 2003, HELCO responded to the Consumer Advocate's information requests.

The Consumer Advocate does not object to the commission's approval of HELCO's application.¹

¹Consumer Advocate's Statement of Position, filed on June 6, 2003.

II.

A.

HELCO is the owner of 1.592 acres of land at Kuliwai, Hamakua, Hawaii, known as the Ahualoa transmission line property, identified as Tax Map Key Parcel No. (3) 4-6-006-017 ("Parcel 17"). Grantees own and reside on property identified as Tax Map Key Parcel No. (3) 4-6-006-008 ("Parcel 8"), which is near Parcel 17, as shown on the map attached hereto as Exhibit 1 ("Exhibit 1").² Furthermore, as shown on Exhibit 1:

1. Grantees' property, Parcel 8, is located in-land of Parcel 17. On the east side of Parcel 8 is an unimproved homestead road, known as Lower Hamakua Road (depicted as "Hamakua Road" on Exhibit 1).

Adjacent to Lower Hamakua Road, on the east side, opposite of Grantees' property, are two properties -- HELCO's Parcel 17 and property owned by the State of Hawaii ("State"), identified as Tax Map Key Parcel No. (3) 4-6-006-012 ("Parcel 12").

2. Mamalahoa Highway, also known as the Honokaa-Waimea Road, runs adjacent to the east side of Parcels 17 and 12.

HELCO explains that:

1. The ownership of Lower Hamakua Road is "currently in limbo" between the State and County of Hawaii ("County"). Neither governmental entity claims ownership. Hence, neither the State nor the County maintains Lower Hamakua Road.
2. Lower Hamakua Road is currently washed out, overgrown with vegetation, and is nearly impassable on either side of Grantees' property, i.e., either north or south.
3. HELCO's proposed easement is the only access Grantees' presently have.

²Exhibit 1 is the map attached to the Grant of Easement.

Previously, access from the subject property was by an easement over property on the west side of Parcel 8, which is identified as Tax Map Key Parcel No. (3) 4-6-006-006, as shown on Exhibit 1 ("Parcel 6"), to Kapuna Road.

However, when Grantees acquired their property, the easement over Parcel 6 was inadvertently extinguished, and the owner of Parcel 6 refuses to reinstate the easement.

4. Accordingly, Grantees' property is essentially landlocked.

B.

By the Grant of Easement, HELCO has granted a perpetual, non-exclusive easement over its Ahualoa transmission line property to Grantees, for the purpose of constructing and improving a roadway for ingress and egress from Grantees' property to Mamalahoa Highway.³ Under the terms of the Grant of Easement:

1. Grantees acknowledge that HELCO's vehicles and crews will occasionally use the roadway: (A) to maintain and repair the Ahualoa transmission line; and (B) for tree trimming.
2. HELCO "will not be liable for any damages to Grantees' improvements caused by Grantor's vehicles."
3. Grantees agree to indemnify and hold HELCO harmless "from and against all claims and demands for loss or damage," arising out of Grantees' use of the roadway.

³HELCO states that Grantees "will also be acquiring an easement from the State over Parcel 12." Thus, it appears that Grantees, from their property, will have access to Mamalahoa Highway via: (1) an unobstructed portion of Lower Hamakua Road; (2) Parcel 12; and (3) HELCO's Parcel 17. See Exhibit 1, attached.

4. Grantees agree to procure and maintain, at their own expense, a public liability insurance policy, during the entire term of the grant of easement.

HELCO represents that: (1) the Ahualoa transmission line property is currently carried at \$18,030 in its rate base; and (2) it will grant the easement to Grantees for a valuable consideration of \$708, a one-time fee.

HELCO states that the easement runs "along the side of [its] property in the setback area where nothing can be built anyway." Further, in its response to PUC-IR-201, HELCO explains how it computed the \$708 one-time fee.⁴

III.

A.

HRS § 269-19 provides in part that "[n]o public utility corporation shall sell, lease, assign, . . . or otherwise dispose of or encumber the whole or any part of its road, line, plant, system, or other property necessary or useful in the performance of its duties to the public, . . . without first having secured from the public utilities commission an order authorizing it so to do."

⁴Essentially: (1) based on Parcel 17's 2002 tax assessed value, HELCO calculated the fee value of the 3,000 square feet easement area as \$3,540; and (2) 20 per cent of the easement area's fee value, i.e., \$708, "was set as compensation for inconvenience, or disutility, to HELCO."

B.

The Consumer Advocate, following the completion of its investigation, states that: (1) the easement appears necessary for Grantees to legally access their property, and will not adversely affect HELCO's operations; and (2) the terms and conditions of the grant of easement, including the indemnity and insurance provisions, are reasonable.

At the same time, the Consumer Advocate notes that the \$708 one-time fee is inconsistent with the charge reflected in prior dockets, where Hawaiian Electric Company, Inc. "charged a nominal fee in exchange for the granting of easements to private entities." Nonetheless, "because HELCO should be compensated for [the costs] incurred to process this grant of easement[,]" the Consumer Advocate does not object to the assessed fee.⁵

IV.

Upon careful review, the commission finds that HELCO's Grant of Easement is reasonable and consistent with the public interest. In this instance, the easement will give the Grantees access to and egress from their residential property, which is otherwise landlocked. At the same time, HELCO retains the right to utilize the easement for public utility purposes.

In addition, there is no evidence that the easement will adversely affect HELCO's utility operations. Instead, HELCO notes that the easement "will be beneficial to HELCO since the

⁵Notwithstanding its non-opposition, "the Consumer Advocate expects HELCO to justify the fees that will be assessed in exchange for the granting of easements in future applications."

roadway will always be clear of vegetation and in a drivable condition." Moreover, the indemnity and insurance provisions provide HELCO and its ratepayers with additional protection.

Accordingly, the commission will approve the easement granted to the subject homeowners.

V.

THE COMMISSION ORDERS:

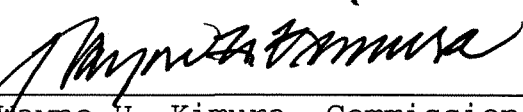
1. The Grant of Easement, as described in HELCO's application filed on February 25, 2003, is approved.

2. This docket is closed.


DONE at Honolulu, Hawaii this 16th day of June, 2003.

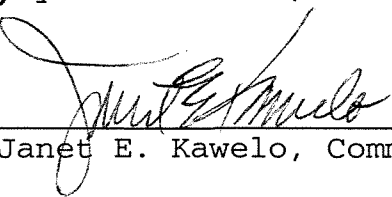
PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

By 
Carlito P. Caliboso, Chairman

By 
Wayne H. Kimura, Commissioner

APPROVED AS TO FORM:

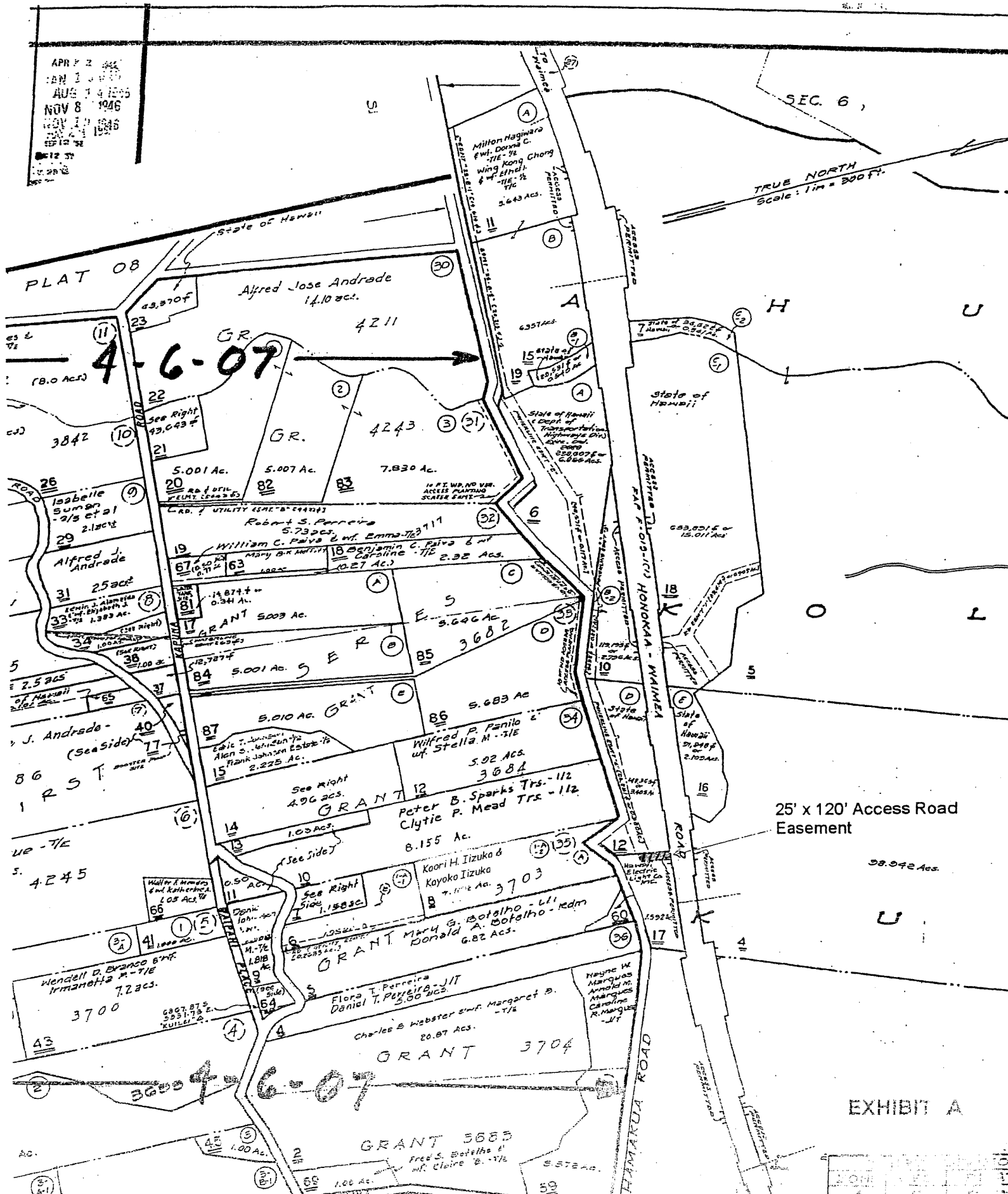

Michael Azama
Commission Counsel

By 
Janet E. Kawelo, Commissioner

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DECISION AND ORDER
EXHIBIT 1

EXHIBIT I
PAGE 8 OF 8



CERTIFICATE OF SERVICE

I hereby certify that I have this date served a copy of the foregoing Decision and Order No. 20234 upon the following parties, by causing a copy hereof to be mailed, postage prepaid, and properly addressed to each such party.

DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS
DIVISION OF CONSUMER ADVOCACY
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Karen Higashi

Dated: June 16, 2003